

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.606(b)) MM Docket No. 92-246
Table of Allotments) RM-8091
TV Broadcast Stations)
(Ridgecrest, California))

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To: The Commission

**OPPOSITION TO
APPLICATION FOR REVIEW**

Community Television of Southern California ("CTSC") hereby opposes Valley Public Television, Inc.'s ("Valley") Application for Review. Valley seeks review of the Mass Media Bureau's affirmation of its prior dismissal of Valley's Petition for Rule Making to substitute Channel *41 for Channel *25 at Ridgecrest, California, or alternatively, to place a site restriction on Channel *25 at Ridgecrest.^{1/} The Bureau properly held that Valley's present intent to apply for Channel *39 in Bakersfield sometime in the next three years is too speculative to support Commission action changing the allotment at Ridgecrest. There are simply too many uncertainties with respect to future circumstances and events to justify Commission action at this time. Moreover, the current uncertainty about the level of federal funding for public broadcasting three years hence materially increases the speculative nature of Valley's

^{1/} See Amendment of Section 73.606, Table of Allotments, Television Broadcast Stations (Ridgecrest, California), Memorandum Opinion and Order, MM Docket 92-246 (June 9, 1995).

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commitment. Accordingly, Valley's Application for Review should be denied.

Background

Valley filed an application for a new noncommercial educational television station on Channel *39 at Bakersfield (File No. BPET-900904KF) in September 1990. This application was mutually exclusive with an application that had been filed by CTSC (File No. BPET-881012KE) for the same channel. While CTSC had proposed a transmitter site that fully complied with the FCC's rules, Valley proposed to locate its transmitter on Breckenridge Mountain, which is over 10 km short-spaced to the Ridgecrest allotment.^{2/} To alleviate the problem, Valley filed a Petition for Rule Making in which it sought the substitution of Channel *41 for Channel *25 at Ridgecrest or, alternatively, a site restriction on Channel *25.^{3/}

^{2/} Valley's claims concerning the superiority of the Breckenridge site and the benefits of its proposed reallocation scheme were heavily contested by CTSC. See Comments of Community Television of Southern California filed on December 28, 1992 in the current proceeding. As CTSC demonstrated in those Comments, there are other sites from which comparable or superior service can be provided to Bakersfield and Valley's reallocation proposals would severely and adversely affect the use of either Channel *41 or *25 in Ridgecrest. Accordingly, CTSC alleged that Valley's alleged public interest justification for the change in the Table of Allotments did not support its proposal.

^{3/} Valley submitted its re-allotment proposal only after CTSC noted that its proposal to operate from Breckenridge was short-spaced to the allotment in Ridgecrest and after CTSC demonstrated that Valley's subsequently filed request for a waiver of the short-spacing rule was fundamentally defective.

Subsequently, Valley and CTSC filed a joint petition for approval of settlement with respect to their applications for Channel '39 at Bakersfield, which the Commission granted on July 20, 1993.^{4/} The settlement provided, inter alia, that the CTSC and Valley applications be dismissed with prejudice and that neither party would file an application for a new noncommercial educational station on Channel '39 at Bakersfield for five years unless an independent third party filed an application for the facility within that time. In view of the settlement, the Allocations Branch of the Mass Media Bureau dismissed as moot Valley's Petition for Rule Making.^{5/} The Policy and Rules Division denied Valley's request for reconsideration.^{6/}

Discussion

Valley contends that the Bureau erred in concluding that Valley's Ridgecrest proposal was moot because it intends to reapply for Channel '39 at Bakersfield three years from this August or, if an independent third party applies for the channel before that time, then Valley will submit a competing application. As the Mass Media Bureau stated in its Memorandum Opinion and Order denying Valley's request for reconsideration,

^{4/} See In re Applications of Community Television of Southern California and Valley Public Television, Inc., Memorandum Opinion and Order, MM Docket 93-93 (July 20, 1993).

^{5/} Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Ridgecrest, California), Report and Order, 8 F.C.C. Rcd 7626 (1993).

^{6/} See supra note 1.

however, Valley's intent to file for Channel *39 sometime in the future is based on mere speculation.

First, Valley's statement that it will apply for Channel *39 is not supported by any affidavit or declaration from a principal of Valley. See, 47 C.F.R. § 1.16. Rather, the claim is made in the Petition for Review which was signed solely by Valley's counsel. As such, there is no valid expression of intent by the proposed applicant.

Second, even if Valley's statement were supported by an Affidavit or Declaration, an expression of intent to do something three years hence is, as the Bureau held, simply too speculative to justify any modification of the Table of Allotments. Too many things can happen between now and 1998 which could alter Valley's plans. Further, virtually any change in a television allotment affects other parties since a change in the Table has a rippling effect and could preclude other changes by applicants interested in facilities in other locales. Thus, acting on Valley's proposal could impair the ability of others ready, willing and able to commence new service.

Moreover, under the Commission's present plans, ATV or digital television service should begin coming on line about 1998^{2/} and many stations will be marshalling their financial resources to construct their ATV facilities. Valley will unquestionably face a similar financial issue in three years and

^{2/} Second Report and Order on Advanced Television Systems, 7 F.C.C. Rcd 3340, recon. qtd in part, denied in part, 7 F.C.C. Rcd 6924 (1992).

thus its interest in constructing a second station in the distant Bakersfield market in three years could well be undermined by the need to deploy a digital facility in Fresno.

Third, there is a substantial question whether Valley will be in the position to apply for a new station in 1998. As the Commission is well aware, congressional support for public broadcasting is under attack and there is significant sentiment in Congress to "zero out" public broadcasting over the next three years. Consequently, the financial situation for public broadcasters in the next three years is uncertain and there is substantial concern about the ability of many public television stations, particularly those in smaller markets, to survive, nevermind make the capital expenditures necessary to construct a full-power station.

This threatened reduction in federal funding is particularly relevant to Valley since there was a substantial question as to Valley's financial qualifications in the prior proceeding involving Valley's application for Channel *39. In that proceeding, CTSC demonstrated that Valley did not have at that time, nor at any point after its application was filed, current assets in excess of its current liabilities sufficient to construct and operate its proposed station for three months without revenue.^{8/} CTSC pointed out that in 1993, Valley's total financial requirement was estimated to be approximately

^{8/} See Motion to Enlarge Issues filed by CTSC on May 3, 1993 in MM Docket 93-93.

\$350,000, but its cash reserves were only \$201,281.^{9/}

Accordingly, substantial questions existed two years ago as to Valley's financial qualifications, and with less funding from Corporation for Public Broadcasting in upcoming years, Valley's difficulty in meeting the Commission's financial requirements will be exacerbated.

Thus, Valley's ability to file for Channel '39 at some future date is in question, and the Mass Media Bureau properly dismissed Valley's petition rather than continue this proceeding or hold it in abeyance for three years.^{10/}

^{9/} See id. at 5. The \$350,000 figure included \$336,843, which Valley indicated as its anticipated construction costs in its 1993 NTIA Supplement, and a relatively nominal operating cost figure of \$5,000 per month. Moreover, in its 1993 NTIA application, Valley increased its estimated costs of construction to \$363,843. In 1998 when Valley allegedly intends to apply for Channel '39, the costs will be even higher.

^{10/} Valley also contends that the Commission's termination of this rule making proceeding will delay the introduction of new, local, free, noncommercial educational television service to Bakersfield residents. See Valley's Application for Review at 6. That claim is hollow given Valley's failure to propose any locally-originated programming in its application for Channel '39 and its reliance on its Fresno programming to serve Bakersfield. See, Exhibit 3 to Valley's Bakersfield Application, *supra*. Moreover, Bakersfield is currently served by two noncommercial educational translator stations, one operated by Valley and the other by CTSC. Under the Commission's rules, Valley is free to modify its translator station to a low power station and to offer locally oriented and originated programming. Consequently, there is no need for the Commission to engage in speculative action modifying its Table of Allotment to facilitate the introduction of local noncommercial educational television service in Bakersfield.

Conclusion

Valley has failed to rebut the Commission's conclusion that its rule making request is based on mere speculation. Accordingly, its request should be denied.

Respectfully submitted,

Theodore D. Frank
Theodore D. Frank

Veronica D. McLaughlin
Veronica D. McLaughlin
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 857-6016

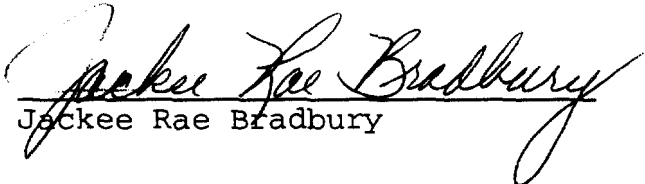
Counsel for Community Television of
Southern California

July 25, 1995

CERTIFICATE OF SERVICE

I, Jackee Rae Bradbury, hereby certify that I have on this 25th day of July 1995 caused copies of the foregoing "Opposition to Application for Review" to be served by first class U.S. mail, postage prepaid, upon the following:

Kathryn A. Kleiman
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Rosslyn, VA 22209


Jackee Rae Bradbury